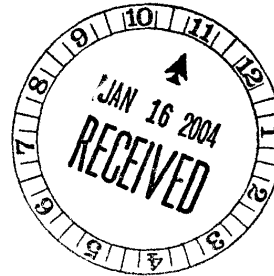


209874

CHARLES H. MONTANGE  
ATTORNEY AT LAW  
426 NW 162ND STREET  
SEATTLE, WASHINGTON 98177

(206) 546-1936  
FAX: (206) 546-3739

15 January 2004



Hon. Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423-0001

Re: City of Lincoln -- Petition for a Declaratory  
Order, F.D. 34425  
Response to LLC (McFarland) letter of 14 Jan. 04

Dear Mr. Williams:

1. By letter dated 14 January 2004, Lincoln Lumber Company's counsel, Mr. McFarland, claimed that City of Lincoln's Rebuttal was not timely filed and asked that it be stricken. The Rebuttal was due on January 8. This Board's website records the Rebuttal as filed on January 9.

City dispatched its Rebuttal for filing by an express service (Federal Express), next day delivery, on January 7, 2004. A copy of the relevant Federal Express airbill is attached as Exhibit A. The relevant FedEx "Track Shipments" record, as downloaded from the Federal Express website and attached as Exhibit B, confirms the shipment date was January 7. According to Exhibit B, Federal Express apparently sent the package to a wrong address in Washington, D.C. on January 8, and did not deliver the package to the Board until 4:18 P.M. on that day.<sup>1</sup> Based on telephone inquiry by counsel, Federal Express claims no one was available at the Board either to sign for the package or else to send it through security X-ray procedures at 4:18 PM on January 8. Federal Express accordingly delivered the package the following day. See Exhibit B.

Under 49 C.F.R. § 1104.6, a filing is timely if delivered to a private express delivery service (offering one day delivery to Washington D.C.) at least one day in advance of a filing deadline for delivery to STB. Federal Express offers next day service from Seattle to Washington, D.C. Exhibits A and B demonstrate that City of Lincoln is in compliance with 49 C.F.R. § 1104.6 and that the Rebuttal was thus timely filed. Mr. McFarland's claim that the filing was not timely has no merit,

---

<sup>1</sup> There were severe weather conditions in the Pacific Northwest (including Seattle) on January 6 and 7, but that apparently was not the reason for the delay in the pleading reaching the Board by Federal Express.

ENTERED  
Office of Proceedings

JAN 16 2003

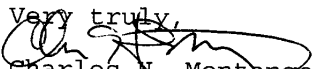
Part of  
Public Record

and his motion to strike the Rebuttal thus must be denied.

2. Mr. McFarland also complains that he was not timely served. The certificate of service attached to the Rebuttal shows service. City's counsel personally dispatched a service copy to Mr. McFarland by "priority mail" between 4 and 5 PM from the U.S. Post Office at Greenwood and 83d Streets in Seattle, Washington, after being assured that the package would reach Chicago by Friday, January 9, or Saturday, January 10, at the latest. Counsel was away most of the day on Friday, January 9, when Mr. McFarland initially telephoned about service. Counsel returned the call late that afternoon (due to time differences, Mr. McFarland's office had already closed), and indicated that the package should be in Mr. McFarland's hands by Saturday or Monday. When Mr. McFarland left a message on the morning (Seattle time, where City's counsel resides) of January 12, 2004, that the package had still not arrived, counsel for the City personally faxed the entire filing to him, although even at that time Mr. McFarland had not so requested. (Mr. McFarland somewhat begrudgingly acknowledges receipt of the fax.) In candor, City's counsel would have faxed the Rebuttal to Mr. McFarland earlier had he so requested (he did not), but since Lincoln Lumber Company had no right of reply to the Rebuttal (it is supposed to be the final brief), City's counsel did not understand the matter to have such urgency. In short, there has been substantial compliance with service obligations on opposing counsel, and in any event opposing counsel makes no showing of any prejudice. Mr. McFarland's request that the Rebuttal be stricken for lack of service accordingly also fails.

Finally, the Board and Mr. McFarland can be assured that in all future pleadings served on Mr. McFarland, City will employ either a private express service which specifically tracks shipments, or will employ some form of return receipt. City is not trying to "play cute" on service or filing. City is interested in a prompt substantive decision based on the relevant facts, and not on procedural gimmickry or horsing around by attorneys.

3. In conclusion, Mr. McFarland's letter motion to strike the Rebuttal must be denied.

Very truly,  
  
Charles N. Montange  
for City of Lincoln

Atts. (Exhibits A & B)

cc. Thomas McFarland, Esq. (LLC) (w/atts.) (express service)  
Daniel LaKemper, Esq. ("commenters") (w/atts.) (U.S. Mail)  
Joel Pedersen, Esq. (City of Lincoln) (w/atts.)

Exhibit A

FedEX Airbill

**FedEx** USA Airbill  
Express

FedEx  
Tracking  
Number

8431 5991 6610

From Please print and press hard.

Date 7 Jan 04 Sender's FedEx Account Number 1287-6516-6

Sender's Name Phone (206) 546-1936

Company CHARLES MONTANGE ATTNY

Address 426 NW 162ND ST

Dept./Floor/Suite/Room

City SEATTLE State WA ZIP 98177-3730

Your Internal Billing Reference  
First 24 characters will appear on invoice.

OPTIONAL

To Recipient's Name Secretary (for filing) Phone ( )

Company Surface Transportation Board

Address 1925 K Street NW  
To "HOLD" at FedEx location, print FedEx address. We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address Dept./Floor/Suite/Room

City Washington State DC ZIP 20123-0001

Try online shipping at [fedex.com](http://fedex.com)

By using this Airbill you agree to the service conditions on the back of this Airbill and in our current Service Guide, including terms that limit our liability.  
Questions? Visit our Web site at [fedex.com](http://fedex.com)  
or call 1.800.Go.FedEx® 800.463.3339.

0266548483



4a Express Package Service

☐ FedEx Priority Overnight Next business morning  
☒ FedEx Standard Overnight Next business afternoon  
☐ FedEx First Overnight Earliest next business morning delivery to select locations  
☐ FedEx 2Day Second business day  
☐ FedEx Express Saver Third business day  
FedEx Envelope rate not available. Minimum charge: One-pound rate.

Packages up to 150 lbs.

Delivery commitment may be later in some areas.

4b Express Freight Service

☐ FedEx 1Day Freight\* Next business day  
☐ FedEx 2Day Freight Second business day  
☐ FedEx 3Day Freight Third business day

Packages over 150 lbs.

Delivery commitment may be later in some areas.

5 Packaging

☐ FedEx Envelope\*  
☐ FedEx Pak\* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak  
☒ Other

\* Declared value limit \$500

6 Special Handling

☐ SATURDAY Delivery Available ONLY for FedEx Priority Overnight and FedEx 2Day to select ZIP codes  
☐ HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight  
☐ HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations  
Does this shipment contain dangerous goods?  
One box must be checked.  
☒ No  
☐ Yes As per attached Shipper's Declaration  
☐ Yes Shipper's Declaration not required  
☐ Dry Ice Dry Ice, 5 UN 1845 x kg  
Dangerous Goods (including Dry Ice) cannot be shipped in FedEx packaging.  
☐ Cargo Aircraft Only

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.  
☒ Sender Acct. No. in Section 1 will be billed.  
☐ Recipient  
☐ Third Party  
☐ Credit Card  
☐ Cash/Check

FedEx Acct. No. Exp. Date  
Credit Card No.

Total Packages 1 Total Weight 10 Total Declared Value\* \$ .00  
FedEx Use Only

8 Release Signature

Sign to authorize delivery without obtaining signature.

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

447

SF# Rev. Date 5/03 Part #157810 ©2003 FedEx PRINTED IN U.S.A.

Exhibit B

FedEX Tracking Record

[United States Home](#)[Information Center](#) | [Customer Support](#)

Search

Package / Envelope Services

Freight Services

Same Day Services

Ship

Track

Rates

Pickup

Locations

Transit Time

International

Track Shipments

Detailed Results

[Printable Version](#) [Quick Help](#)

**Tracking number** 843159916610  
**Signed for by** P.PEARSON  
**Ship date** Jan 7, 2004  
**Delivery date/Time** Jan 9, 2004 12:21 pm

**Delivered to**  
**Delivery location**  
**Service type**

Mailroom  
WASHINGTON DC  
Standard Box

You can also track:

- [By Alternate](#)
- [By Email](#)
- [TCN \(Gov't\)](#)

Track other FedEx

- [FedEx Customer shipments](#)
- [FedEx Tracking shipments](#)
- [International](#)

Date/Time	Status	Location	Comments
Jan 9, 2004	12:21 pm <b>Delivered</b>	WASHINGTON DC	
	12:15 pm Delivery attempt	WASHINGTON DC	Recipient location security delay. Delivery will be reattempted.
Jan 8, 2004	8:22 am On FedEx vehicle for delivery	WASHINGTON DC	
	9:30 pm Left FedEx Origin Location	WASHINGTON DC	
	4:18 pm Delivery attempt	WASHINGTON DC	Customer not available or Business closed
	12:37 pm On FedEx vehicle for delivery	WASHINGTON DC	
	8:48 am Arrived at FedEx Ramp	DULLES VA	
	8:15 am Arrived at FedEx Destination Location	WASHINGTON DC	
	7:46 am Left FedEx Ramp	DULLES VA	
	7:00 am Delivery attempt	WASHINGTON DC	Incorrect address
	7:00 am On FedEx vehicle for delivery	WASHINGTON DC	
	3:57 am Left FedEx Sort Facility	MEMPHIS TN	
	1:23 am Arrived at Sort Facility	MEMPHIS TN	

**Wrong Address?**  
Reduce future mistakes  
[FedEx Address Checker](#)

**Shipping Freight?**  
FedEx has **LTL**, air surface and air express multi piece packages and ocean freight.

[Signature proof](#)[Track more shipments](#)

Email your detailed tracking results (optional)

Enter your email, submit up to three email addresses (separated by commas), add your message (optional), and click **Send email**.

From:   
To:

Add a message to this email.

[Send email](#)[Global Home](#) | [Service Info](#) | [About FedEx](#) | [Investor Relations](#) | [Careers](#) | [fedex.com Terms](#)